HON'BLE SRI JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 36014 of 1998

Dated 12th June, 2007

Between

Naresh Kumar Suhalka

…Petitioner

and

The Commissioner of Prohibition & Excise,
A.P., Hyderabad, and ors.

…Respondents.

THE HON'BLE MR JUSTICE R.SUBHASH REDDY

WRIT PETITION NO : 36014 of 1998

ORDER:

This Writ Petition is filed questioning the orders of confiscation passed by the Deputy Commissioner of Prohibition and Excise, Nizamabad Division in CR.No. B3/1146/96, dated 20-9-1997, as confirmed by the Commissioner of Prohibition and Excise in CR.No.1650/98/DPE/B2, dated 24-9-1998.

The Prohibition and Excise officials registered a case against the petitioner under Section 34(a) of the A.P. Excise Act, 1968 and under Section 8(b) of the A.P. Prohibition Act, 1995, on 20-6-1996 in CR.No.414/95-96, at Pitlam Check post in Nizamabad District. The above said crime was registered alleging that the lorry owned by the petitioner was unauthorizedly used for transportation of 2994 bottles of

Indian made liquor of 750 ml each, along with consignment of salt. It was alleged that the said transportation was in violation of the provision under Section 8 (b) of the A.P. Prohibition Act, 1995. On reporting the seizure, show cause notice was issued to the petitioner to show cause why the vehicle should not be confiscated. To the said show cause notice, explanation was filed by the petitioner specifically pleading that he had no knowledge of the alleged transportation of liquor and the said transportation was undertaken by the driver and cleaner of the lorry without his knowledge. But however, the primary authority, i.e. the Deputy Commissioner of Prohibition and Excise, Nizamabad Division, without considering the explanation and the plea of the petitioner, that he had no knowledge of the alleged transportation, by merely recording a finding that the chemical analysis of the seized samples confirmed them as Indian Made Liquor, passed the orders of confiscation.

As against the same, the petitioner had preferred statutory appeal under Section 46 of the A.P. Excise Act, 1968. The appellate authority curiously by recording a finding that the show cause notice sent to the appellant/petitioner was returned un-served and by further observing that no material was placed by the appellant so as to deviate from the findings recorded by the primary authority, confirmed the orders of confiscation.

In this Writ Petition, it is submitted by Sri S.Bhooma Goud, learned Counsel appearing for the petitioner that the respondents have not considered the explanation offered by the petitioner in proper perspective, and, ordered confiscation in a routine manner. It is submitted that as much as the petitioner is the owner of the lorry and permanent resident of Rajasthan state, and, his vehicle was used in

the transit without his knowledge and connivance, the vehicle is not liable for confiscation. The learned Counsel, in support of his contentions, placed reliance on the judgment of a Full Bench of this Court in Writ Petition No. 157 of 2000, dated 11-7-2002.

On the other hand, it is submitted by the learned Government Pleader appearing for the respondents, that as much as it is not in dispute that liquor was seized, which was being transported in the vehicle of the petitioner, the primary authority by considering the explanation of the petitioner, ordered for confiscation and as the same was confirmed by the appellate authority, as such, there are no grounds to interfere with the orders under challenge under Article 226 of the Constitution of India.

Section 12 of the A.P. Prohibition Act, 1995, deals with the confiscation of things mentioned therein and Section 13 of the Act deals with confiscation by prohibition and excise officers in certain cases. Section 13-A of the Act, which is subsequently inserted in the above said Legislation, provides for giving opportunity or prior notice indicating the ground on which it is proposed to confiscate the property and also gives an opportunity to make representation. Further, a Full Bench of this Court in Writ Petition No. 157 of 2000, dated 11-7-2002 held that when transportation of contraband goods was undertaken without knowledge of the owner of the vehicle, the vehicle is not liable for confiscation and the owner of the vehicle can show by producing evidence that he had no knowledge therefor. It is appropriate to extract relevant portion of the judgment, which reads as follows:

> "We have perused the order passed by the Commissioner of Prohibition and Excise and also the pleadings, and, carefully considered the arguments advanced

by the counsel for both the parties. A perusal of the order impugned in this proceedings clearly goes to show that the same suffers from non-application of mind. Prior to passing of the impugned order, the explanation of the owner/writ petitioner had not been considered at all. Surmises and conjectures appear to be the basis of the said order. As indicated above, the respondents have merely proceeded on the basis that as the vehicle of the petitioner was found transporting contraband goods, which were possessed by the passenger, the same ipso facto is liable to be confiscated. We are unable to appreciate the said conclusion. The law providing for confiscation is an appropriatory legislation and the same is to be strictly construed. Before an order of confiscation is passed, the authority must satisfy itself that all the ingredients therefore are satisfied keeping in view the proposition of law in mind that confiscation is deprivation of property and existence of *mens rea* is also an essential ingredient and plays a vital role in such matters. In any event, where an offence is said to have been committed, the owner of the vehicle can show by producing evidence that he had no knowledge therefore. In our opinion the owner of the vehicle has no knowledge about the contraband nature of the goods transported in lorry by the passenger. It is not in dispute that the passenger has also not been proceeded against. Under such circumstances, were are of the view that *mens rea* is absent in so far as the writ petitioner/owner of the vehicle is concerned. We have, therefore, no hesitation in allowing the writ petition and ordering the return of the vehicle to the writ petitioner.

At this juncture, learned Government Pleader would submit that the matter may be remitted back to the original authority concerned to re-investigate into the matter by affording an opportunity of hearing to the owner. In our opinion, such a course need not be adopted as no useful purpose will be served in remitting the matter back to the authority at this distance of time. We are of the opinion that the owner cannot be made liable for transportation of contraband goods by the passenger, that too, without the knowledge of the owner of the vehicle. We have, therefore, no hesitation in directing the respondents to release the vehicle of the Writ petitioner. The bank guarantee or security, if any, furnished by the writ petitioner will be returned to the writ petitioner.

The Writ petition is allowed. In view of the view now

taken in this particular case, there is no need to answer the reference. There will be no order as to costs."

Even in the present case, though show cause notice was issued and opportunity was provided, inspite of filing explanation pleading no knowledge and connivance by the owner about the alleged unauthorized transportation of liquor, no finding was recorded on the same. The primary authority though had recorded that such explanation was filed by the owner, but ordered for confiscation on the ground that the chemical analysis of the samples had proved them as Indian Made Liquor. Equally, the appellate authority did not consider the appeal in proper perspective, and casually dealt the matter though the said remedy is a statutory one. Though the petitioner had filed explanation to the show cause notice, and the primary authority had referred to the explanation offered by the petitioner in its orders of confiscation, dated 20-9-1997, but, the appellate authority curiously recorded a finding that the show cause notice was not served on the appellant. Even on merits, the appellate authority confirmed the confiscation by merely recording a finding that there was no further material placed by the petitioner to deviate from the findings recorded by the primary authority.

From a reading of the order of the primary authority as also that of the appellate authority, it clearly indicates that the respondents have not considered the explanation offered by the petitioner and simply ordered confiscation in a routine and mechanical manner. When it is the case of the petitioner that he had no knowledge about the offence and consignment undertaken for transportation was without instructions from him, unless a finding is recorded as to whether such transportation was undertaken with or without the knowledge and

connivance of the owner of the vehicle, the vehicle cannot be confiscated. In absence of such a finding and in view of the judgment of the Full Bench of this Court referred above, it is a fit case to set aside the order of confiscation passed by the Deputy Commissioner of Prohibition and Excise, Nizamabad Division in CR.No. B3/1146/96, dated 20-9-1997, as confirmed by the Commissioner of Prohibition and Excise in the order dated 24-9-1998 passed in CR.No.1650/98/DPE/B2, and accordingly the said orders under challenge are set aside. The bank guarantee furnished by the petitioner pursuant to the order of this Court is discharged.

The Writ Petition is allowed to the extent indicated above. No order as to costs.

JUSTICE R. SUBHASH REDDY

DATE: 12-06-2007.
Msnr.